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interpretation given to the words "unfair practices" is in line with the policy of Congress as reflected in the establishing of a Federal Trade Commission with plenary powers over unfair competition, and that shown by the Transportation Act of 1920²² which in amending Section 3 of the Act of 1887 provides in specific terms that the Commerce Commission may prescribe rules as to the extension of credit by interstate carriers when an interchange of traffic takes place.²³

J. R. Jr.

SCOPE OF PENNSYLVANIA WORKMEN'S COMPENSATION ACT OF 1915.—A very important case determining the exclusiveness of the remedy under the Pennsylvania Workmen's Compensation Act of 1915¹ was decided recently by a Common Pleas Court,² wherein it was held that the act provided a complete system controlling recovery in case of industrial accident and that therefore anyone who might have maintained an action at law for such injuries or death is now bound by the remedies given by the Act.

It is well settled that in all cases where no agreement has been filed, whereby the parties refuse to accept the provisions of the Act,³ the employee's rights⁴ and those of his dependent relatives⁵ are confined to those given by the Act as they are clearly covered by its provisions. The only doubt arises in cases of parties who prior to the passage of this Act had a right of action for death of a relative resulting from negligence on the part of the employer and who are given no rights whatever under the Act. Thus, in the recent case referred to, the mother of a deceased minor sued in trespass to recover damages on account of the minor's death resulting from the negligence of the defendant Company in supplying the decedent with improper tools and insufficient instruction. The mother alleged non-dependency contending that the Act applied only to employees and their dependent relatives and that therefore she was not bound by its provisions and could sue in

²² Act. Feb. 28, 1920, Stat. 66th Cong., c. 91, Section 405 provides in part as follows: "No carrier by railroad subject to the provisions of this Act, shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to assure prompt payment of all such rates and to prevent unjust discrimination."

²³ See *Ex Parte No. 73*, 59 I. C. C. 456 (1920) for the application of this provision to a concrete case.

¹ Act of June 2, 1915. Penna. P. L. 736.

² *O'Hara v. Standard Steel Works Co.* No. 95, C. P. Mifflin County, Aug. Term 1920. Decided Feb. 18, 1921. (Unreported).

³ Act of June 2, 1915 *supra* § 302.

⁴ *Anderson v. Carnegie Steel Co.* 255 Pa. 33 (1916). *Kaplan v. Honey etc.* 27 Dist. Rep. 535 (Pa. 1918). But where a minor is illegally employed and is injured while so working, he may bring an action of trespass. *Lincoln v. National Tube Co.* 112 Atl. 73 (Pa. 1920).

⁵ *Liberato v. Royer & Herr.* 28 Dist. Rep. 268 (Pa. 1919).

trespass. On statutory demurrer judgment was given for defendant.

Although the Legislature may have intended the Act to cover all cases arising out of industrial accidents, the particular case in question is not specifically covered. Thus it is provided that the Act "shall bind the employer and his personal representatives, and the employee, his or her wife and husband . . . next of kin and other dependents."⁶ The use of the words "other dependents" seems to indicate that the parties previously enumerated are to be qualified by the word "dependent," so that "next of kin" should be interpreted to read "dependent next of kin." Furthermore the word "dependent" has been repeatedly construed to mean actual dependency.⁷ Thus it is clear that parties who are not dependent, do not come within the letter of the Act and therefore would seem not to be bound by its provisions.

The court in the case under discussion based its decision on the theory that the rights of parties seeking a recovery can rise no higher than those of the employee himself and that therefore all are bound by the Act.⁹ Although it is true that the employee is so bound it does not follow that all others are equally bound. The right of an injured employee to sue for damages is one given by the Common Law and although his right to one particular method of recovery has been taken away, another and more valuable one has been substituted in its place. Therefore the original cause of action, extended by taking away several of the employer's defenses remains; the liabilities alone are changed. Although it must be conceded that had the cause of action been extinguished by the Act then it would follow that the rights of those claiming under this same cause of action could rise no higher than that of the employee. However that is not this case, and although two different parties may have the rights growing out of the same cause of action it does not follow that if the remedy of the one is changed by statute the other is also, unless specifically so stated.

It is clear that the Statute is remedial and is intended to compensate dependents. There was no effort to make any provision for those who were not dependent.⁸ Thus the employer

⁶ Act of June 2, 1915 *supra*, § 303.

⁷ *Benish v. Union Coal & Coke Co.* 27 Dist. Rep. 176 (Pa. 1918). *Karpati v. Cambria Steel Co.* 70 Pa. Sup. Ct. 202 (1919). *Morris v. Yough Coal & Supply Co.* 266 Pa. 216 (1920). But a father though not dependent upon his son for his own support but for the support of the family, is entitled to compensation. *Hall v. Pittsburgh Coal Co.* 26 Dist. Rep. 422 (Pa. 1917).

⁸ *O'Hara v. Standard Steel Works Co.* *supra*.

⁹ Thus it is provided that ". . . should any dependent of a deceased employee die, or should the widow or widower remarry, or should the widower become capable of self-support, the right of such dependent or such widower, to compensation under this section, shall cease." Act of June 2, 1915 *supra* § 307 subsection 9.

It has also been held that after the death of a dependent, no right to compensation accrues to or vests in dependent's estate or administrator. *South Side Trust Co., Admr. v. Winter Garden Co.* 27 Dist. Rep. 122 (1918).

was deprived of his Common Law defenses¹⁰ but in return for this the employee and his dependents were deprived of their prior actions and there was substituted a fixed scale of compensation enabling the employer to avoid troublesome lawsuits and excessive verdicts and insure himself against all losses. Since prior to the Act a right of recovery was given regardless of dependency¹¹ and as no right is substituted for that originally held by non-dependents it seems difficult to hold that so valuable a right should be taken away by implication. If it was the intention of the Legislature to cover all accidents arising out of industry it should have been expressly so stated.

Other jurisdictions where similar legislation is in effect have held that where rights given prior to such acts have not been taken away specifically or by necessary implication, the former remedies remain. Thus it has been held in New York that the brother and sisters of a decedent (there being no other living relatives) might maintain an action at law since no right was substituted for that which they originally enjoyed, and to hold otherwise would excuse the defendant from any liability for his negligence.¹² And so a mother was allowed to recover for the loss of her minor son's services although the son himself had received compensation under the Act for his injury, on the theory that her Common Law right to recover for medical expenses and loss of services could not be taken away by implication.¹³ In Kansas it was held that although there was no limitation provided as to the time within which an action could be brought under their Workmen's Compensation Act, the limitation provided in the earlier statute giving parties a right of action under such circumstances would apply under the new Act, since only so much of the former acts was repealed as is repugnant to the latest Act.¹⁴

¹⁰ Act of June 2, 1915 *supra* § 201.

¹¹ Act of April 15, 1851 Penna. P. L. 674 amended by Act of April 26, 1855 Penna. P. L. 309.

¹² *Shanahan v. Monarch Engineering Co.* 159 N. Y. S. 257. 172 App. Div. 221 (1916), following *Shinnick v. Clover Farms Co.* 154 N. Y. S. 423. 169 App. Div. 236 (1915) which decided that an employee whose ear had been bitten off by a dog could maintain an action at law since the Compensation Act covered only injuries resulting in disability.

The New York Supreme Court in *Connors v. Semet-Solvay Co.* 159 N. Y. S. 431. 94 Misc. Rep. 405 (1916) refused to allow an employee who had received compensation for an injury to maintain a further action at law to recover additional compensation for pain, suffering and disfigurement, stating that *Shinnick v. Clover Farms Co.*, *supra* had been overruled by *Jensen v. Southern Pacific Co.* 109 N. E. 600. 215 N. Y. 514 (1915), which was decided on the theory that the remedy provided by the Workmen's Compensation Act was exclusive and in full substitution for any action of damages. However as the exact point decided by the *Shinnick* case was not before the Court in the *Jensen* Case and as the *Jensen* Case was differentiated in the recent decision of *Morris v. Muldoon*, 180 N. Y. S. 321. 190 App. Div. 689 (1920) it is probably still law in New York.

¹³ *King v. Viscloid Co.* 106 N. E. 988. 219 Mass. 420 (1914). *Contra* *Buonfiglio v. Neumann & Co.* 107 Atl. 285 (N. J. 1919).

¹⁴ *Harwood v. Railway Company.* 171 Pac. 354. 101 Kas. 215 (1917).

However, a contrary but exceedingly interesting view as to the effect of such legislation is presented in a Wisconsin Case which held that their Workmen's Compensation Act applied to an injury occurring outside of the State where the contract of employment was entered into and suit brought in Wisconsin.¹⁵ The court proceeded on the theory that all the rights and liabilities that had existed in such cases prior to this Act were entirely extinguished by this new legislation, the fundamental basis for which is the economic conception that "injuries to employees are regarded as necessarily incidental to the conduct of industry under modern conditions, and not the result of a wrong committed by the employer and that therefore the damages arising therefrom should be borne by the whole industry, rather than by the employer." Accordingly the provisions of the Workmen's Compensation Act is as much a part of every contract of employment entered into in Wisconsin as their law of negotiable instruments is a part of every promissory note made, executed and delivered in Wisconsin. Although there is no doubt but that the economic conception underlying this legislation is that stated by the Wisconsin court, still it is going very far to read into the Act by implication an intent on the part of the legislature to completely abolish the rights which previously existed and substitute for them those provided by the Act, so that in many cases parties guilty of negligence which results in death to an employee will be completely excused from liability.

There is one grave objection however in allowing an action outside the Workmen's Compensation Act, for in every case where an action could have been maintained at law the relatives could allege non-dependency and so there would be restored a great field of litigation which the Act was designed to prevent. To remedy this defect the Legislature should provide for either damages (not compensation) regulated by the amount of wages received by the deceased employee in cases of non-dependency where an action could have been maintained prior to the Act, or it should expressly declare that all recoveries for actions arising out of industrial accident are to be determined under the Workmen's Compensation Act of 1915.

J. S.

COMPULSORY ABOLISHMENT OF GRADE CROSSINGS AND THE DUE PROCESS CLAUSE.—In the recent case of *Erie Railroad Company v. The Board of Public Utility Commissioners et al*¹ the United States Supreme Court affirmed the decision of the New

¹⁵ *Anderson v. Miller Scrap Iron Co.* 170 N. W. 275. 169 Wis. 106 (1919). *Contra* *Gould's Case* 102 N. E. 693. 215 Mass. 480 (1913). *Lemieux v. Boston & Me. R. R.* 106 N. E. 992. 219 Mass. 399 (1914). See note, L. R. A. 1916A, 443.

* Only decisions of the United States Supreme Court are cited.

¹ 41 Sup. Ct. 169 (1920).